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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,423	12/17/2004	Richard Richley	TDYNE-305	6759
2387 7590 04/19/2010 Olson & Cepuritis, LTD. 20 NORTH WACKER DRIVE 36TH FLOOR CHICAGO, IL 60606				
EXAMINER STEWART, ALVIN J				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
04/19/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,423

Applicant(s)

RICHLEY ET AL.

Examiner

Alvin J. Stewart

Art Unit

3774

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-12, 15 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12, 15 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10/27/2009 have been fully considered but they are not persuasive.

As previously disclosed in the Final Office action filed on 04/27/2009 the Examiner maintains the last office action rejections. The two references clearly disclose all the structure limitations claimed by the applicant's representative. Even in the advisory action the Examiner told the Applicant's representative that the new limitation "solid" does not add any structure limitations to the claims and even show that the meaning of the word : "solid" in the Merriam-Webster dictionary is: "possessing or characterized by the properties of a solid: neither gas nor liquid; made firmly and well or having no break or interruption. Therefore, the prior art still read on the elected subject matter.

First the Applicant's representative is not arguing the rejection made by the Pisharodi reference (however, the Applicant's representative argue the Pisharodi rejection in the amendment/arguments filed on 01/22/09.

Second, in the RCE filed on 10/27/2009, the applicant's representative is only arguing the Michelson rejection. The Applicant's representative is arguing the meaning of the word "solid" disclosing that Michelson does not disclose a solid cage.

The Examiner disagrees with the Applicant's representative arguments. The Applicant's representative discloses in the Applicant's remarks filed on 08/24/09 two meanings of the word "solid" (see page two of the applicant's remarks).

The first meaning is ---having an interior filled with matter; being without an internal cavity... opposed to hollow... or the second meaning: ---something (as a substantial mass) that is solid as a compact mass of masonry or comparable fabrication as distinguished from one containing a void or an opening...---.

The Examiner wants to point out on the selective interpretation and broad meaning of the word "solid" by the Applicant's representative. The Applicant's representative selected the narrowest term in the Merriam-Webster dictionary. The Examiner wants to point out other broader meaning of the word "solid". See below.

solid

9 entries found

1	solid (adjective)	▲
2	solid (noun)	▼
3	solid (adverb)	
	solid angle (noun)	▼

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Main Entry: **'solid** *adj*

Pronunciation: /sə-'ləd/

Function: *adjective*

Etymology: Middle English *solide*, from Middle French, from Latin *solidus*; akin to Greek *holos* whole — more at [SAFE](#)

Date: 14th century

1 a : being without an internal cavity <a solid ball of rubber> **b** (1) : printed with minimum space between lines (2) : joined without a hyphen <a solid compound> **c** : not interrupted by a break or opening <a solid wall>

2 : having, involving, or dealing with three dimensions or with solids <a solid configuration>

3 a : of uniformly close and coherent texture : not

loose or spongy : **COMPACT** **b** : possessing or characterized by the properties of a solid : neither gaseous nor liquid <solid waste>

4 : of good substantial *quality* or kind <solid comfort>: as **a** : **SOUND** <solid reasons> **b** : made firmly and well <solid furniture> **c** : **RELIABLE** <a solid performer>

5 a : having no break or interruption <waited three solid hours> **b** :

UNANIMOUS <had the solid support of the party> **c** : intimately friendly or associated <solid with the boss>

6 a : **PRUDENT**, *also* : well established financially **b** : serious in purpose or character

7 : of one substance or character: as **a** : entirely of one metal or containing the minimum of alloy necessary to impart hardness <solid gold> **b** : of a single color — **solid-ly** *adverb*

— **solid-ness** *noun*

Who Gave
"Ritzy"
All That Style?



Find Out in Merriam-Webster's
TOP TEN LISTS

For example, section 2 discloses ---having, involving, or dealing with three dimensions---. Section 3, ---of uniformly close and coherent texture; not loose or spongy; neither gaseous nor liquid. Section 4 (b), ---made firmly and well---. Section 7(a): ---entirely of one metal or containing the minimum of alloy necessary to impart hardness---. These are other broader terms used with the word "solid".

Because the Examiner is selecting the broader terms in the dictionary, then the Examiner still believes that the term "solid" reads on both the previous rejections (Pisharodi & Michelson).

Finally, the Examiner also wants to point out that if the Applicant's representative believes that the invention is a solid cage and solid is having an interior filled with matter; being without an internal cavity....opposed to hollow..., then this invention and the claims are indefinite because the implant disclose a hollow portion used to insert a deployment tool, as shown on the elected species of Figure 18. Elected on 08/23/2007.

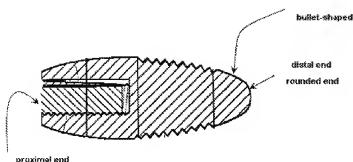
Finally, see paragraphs below disclosing the Examiner's arguments of the last office action (filed on 04/29/09).

Regarding the Applicant's argument with respect to the anchors, the Examiner disagrees with the Applicant's remarks because the threaded surface of the cage 46 or 96 are used to engage with the inner walls of the vertebral bodies (see col. 4, lines 36-40).

The Examiner interpreted the peaks of the threaded surface as the spikes claimed in claims 15 and 36.

Regarding the bullet distal end, the Examiner does not understand why the Applicant's representative is arguing the bullet-shaped distal end because the implant is clearly disclosing a distal end having a rounded end. However, the Examiner wants to clarify that bullets can have

any configuration, even the end can have a square end. If the Applicant's representative wants to positively claim a specific shape the Applicant's representative has to positively claim the wanted shape not only claiming a bullet shape.



NOTE: the Applicant's representative didn't make any comments with respect to the Michelson reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12, 15 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Pisharodi US Patent 6,093,207.

Pisharodi discloses a vertebral implant comprising a cage (68) having a distal end and an open proximal end (92), an anchor (96), a bore (82), and a key hole (80 & 84). The cage is defined by a cylindrical body and helically external threads. Additionally the distal end has a bullet shape.

Claims 10-12, 15 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson US Patent 6,123,705.

Michelson discloses a vertebral implant comprising a cage (100) having a distal end and an open proximal end (see figure 8), an anchor (120), a bore (see figure 8), and a key hole (134 or 142). The cage is defined by a cylindrical body and helically external threads (see different embodiment disclosing a helical thread). Additionally the distal end has a bullet shape.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J. Stewart whose telephone number is 571-272-4760. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alvin J Stewart/
Primary Examiner, Art Unit 3774

April 15, 2010.